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FILED

10 JUL 22 PM 2:35

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

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DEPUTY

Pro Se

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 TODD C. ATKINS,

Case No.

10 CV 1533 IEG J.WVG

11 Plaintiff,

COMPLAINT

12 vs.

13 MAGIC SLIDERS L.P.,

14 Defendants.

15 Plaintiff TODD ATKINS ("Plaintiff"), for his Complaint against Defendant
16 MAGIC SLIDERS L.P. ("Defendant"), alleges as follows:

17 **NATURE OF THE ACTION**

18 1. This is an action for false patent marking under Title 35, § 292, of the
19 United States Code.

20 2. As set forth in detail below, Defendant has violated 35 U.S.C. § 292 by
21 marking and advertising certain products as being "patented" when in fact no valid patents cover
22 the marked products.

23 3. Plaintiff seeks the imposition of a fine against Defendant, one-half of which
24 shall be paid to the United States, and the other half of which shall be paid to Plaintiff pursuant to
25 35 U.S.C. § 292(b).

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THE PARTIES

4. Plaintiff is an individual residing in San Diego, CA with a correspondence
 5 address of 101 W. Broadway, Suite 1050, San Diego, California, 92101.

4. Upon information and belief, Defendant is a limited partnership organized
 5 and existing under the laws of Delaware, having its principal place of business at 50 Main Street,
 6 White Plains, NY 10606-1974.

JURISDICTION, VENUE, AND STANDING

8. This Court has subject matter jurisdiction over Plaintiff's present action
 9 under 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Defendant because, upon
 11 information and belief, Defendant conducts substantial business in the State of California,
 12 including in this Judicial District.

13. Venue is proper in this District under 28 U.S.C. §§ 1391(c) and 1395(a) and
 14 1400 because, at least in part, Defendant's products, the subject matter of this cause of action, are
 15 offered for sale and sold in various retail stores in this District.

16. Plaintiff brings this action under 35 U.S.C. § 292(b) which provides that
 17 any person may sue for civil monetary penalties for false patent marking.

DEFENDANT'S FALSELY MARKED PRODUCTS

19. Upon information and belief, Defendant distributes or sells MAGIC
 20 SLIDER® brand furniture slider products to multiple retail stores, including Home Depot, Target,
 21 Walmart, Ace Hardware, and True Value Hardware and many other retailers. At least some of
 22 such activities occur in this Judicial District.

23. Upon information and belief, Defendant promotes its MAGIC SLIDER®
 24 brand furniture slider products through television advertising. At least some of such activities
 25 target customers in this Judicial District.

26. Upon information and belief, the MAGIC SLIDER® brand furniture slider
 27 products distributed and/or sold in retail stores (in this Judicial District and nationally) by
 28 Defendant include products identified as (i) "RECTANGLE SLIDERS", (ii) "ROUND

1 SLIDERS”, (iii) “SQUARE SLIDERS”, and (iv) “TRIANGLE SLIDERS”. Defendant distributes
2 these products in various sizes and quantities.

3 13. Upon information and belief, Defendant's RECTANGLE SLIDERS,
4 ROUND SLIDERS, SQUARE SLIDERS, and TRIANGLE SLIDERS products include labeling
5 on their packaging that states inter alia, "Patented" and/or "Magic Sliders are patented."

CAUSE OF ACTION FOR FALSE PATENT MARKING

9 14. U.S. Patent No. 5,094,416 ("the '416 patent"), entitled "SLIDING
10 SUPPORT TO FACILITATE THE DISPLACEMENTS OF LOADS AND IN PARTICULAR
11 ITEMS OF FURNITURE" was issued by the USPTO on July 25, 1990. Every claim in the '416
12 patent requires a "cup-shaped member" and a "plug-shaped member" that are "provided with
13 annular ribs and grooves" with "said ribs and grooves of said plug-shaped member being
14 respectively housed in corresponding groves (sic) and ribs of said elastomeric body." Because the
15 MAGIC SLIDER® brand furniture slider products identified above do not include corresponding
16 grooves and ribs, they cannot even arguably fall within the scope of any claim of the '416 patent.

17 15. U.S. Patent No. 5,573,212 (“the ‘212 patent”), entitled “GLIDE BLOCK
18 FOR MOVING LOADS” was issued by the USPTO on Nov. 12, 1996 and expired for
19 nonpayment of fees on Dec 8, 2008. Before its expiration, every claim in the ‘212 patent required
20 “a stud of synthetic material” and “means for attaching said stud to the bottom of a piece of
21 furniture.” Because none of the MAGIC SLIDER® brand furniture slider products identified
22 above includes a stud of synthetic material nor means for securing a stud to furniture, they cannot
23 even arguably fall within the scope of any claim of the ‘212 patent before its expiration. After
24 Dec. 8, 2008, when the ‘212 patent expired, it no longer could protect or cover anything.

25 16. U.S. Patent No. 6,405,982 ("the '982 patent"), entitled "SELF-
26 ATTACHING SLIDING SUPPORT FOR ARTICLES OF FURNITURE" issued on June 18,
27 2002. Every claim in the '982 patent requires an "elastomeric element" having a "base portion"
28 and a "circumferential inwardly extending rim" having an "edge which extends horizontally

1 inward and overhangs an interior space formed by the rim.” Because the MAGIC SLIDER®
2 brand furniture slider products identified above do not include circumferential inwardly extending
3 rims having edges which extend horizontally inward and overhang interior spaces formed by the
4 rims, they cannot even arguably fall within the scope of any claim of the ‘416 patent.

5 17. Upon information and belief, Defendant is a sophisticated company which
6 has experience with applying for, obtaining, and litigating multiple patents, and knows (itself or by
7 its representatives), or reasonably should know, of the requirements of 35 U.S.C. § 292.

8 18. Upon information and belief, Defendant marks its MAGIC SLIDER® brand
9 furniture slider products as “patented” for the purpose of deceiving the public into believing that
10 something contained or embodied in its MAGIC SLIDER® brand furniture slider products is
11 covered by at least one of the listed patents.

12 19. Upon information and belief, Defendant knows, or reasonably should know,
13 that marking the above-described MAGIC SLIDER® brand furniture slider products with false
14 patent statements was and is illegal under Title 35 of the United States Code. At a minimum,
15 Defendant had and has no reasonable basis to believe that its use of the false markings was or is
16 proper or otherwise permitted under federal law.

17 20. Each time Defendant makes, has made, uses, offers to sell, or sells within
18 the United States, or imports into the United States, MAGIC SLIDER® brand furniture slider
19 products containing false patent marking, such as described above, Defendant commits at least one
20 “offense,” as defined in 35 U.S.C. § 292(a).

21 21. Since at least 2003, Defendant has promoted its MAGIC SLIDER® brand
22 furniture slider products through an internet web site identified by the URL
23 www.magicsliders.com.

24 22. Defendant’s web site contains false patent information, including the
25 statements “Magic Sliders are patented coated sliding discs that move any heavy item...” and
26 “Magic Sliders are patented and trademarked.” (See http://www.magicsliders.com/about/ and
27 http://www.magicsliders.com/instructions/)

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1 23. Defendant's web site even lists multiple reasons why its MAGIC SLIDER®
2 brand furniture slider products are allegedly superior to its competitors, stating "Only patented
3 product [in the market]", and "Exclusive patented sizes and shapes". (See
4 <http://www.magicsliders.com/retailers/>).

5 24. For at least the reasons detailed above, Defendant knows, or reasonably
6 should know, that the patent-related statements on its web site are false and violate 35 U.S.C. §
7 292.

8 25. Upon information and belief, Defendant publishes false patent information
9 on its web site for the purpose of deceiving the public into believing that unpatented MAGIC
10 SLIDER® brand furniture slider products contain or embody “patented” technology.

11 26. Each time Defendant transmits, over the internet, MAGIC SLIDER®
12 promotional content containing false patent information or assertions, Defendant commits at least
13 one “offense”, as defined in 35 U.S.C. § 292.

PRAYER FOR RELIEF

15 WHEREFORE, Plaintiff respectfully requests this Court, pursuant to 35 U.S.C.
16 §292, to:

25 (4) Direct that the other half of the fine be paid to Plaintiff pursuant to § 292(b).

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: June 24, 2010

Todd Akins

Pro se

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS016132
Cashier ID: bhartman
Transaction Date: 07/22/2010
Payer Name: ATKINS AND DAVIDSON

CIVIL FILING FEE

For: ATKINS V MAGIC SLIDERS
Case/Party: D-CAS-3-10-CV-001533-001
Amount: \$350.00

CHECK

Check/Money Order Num: 4252
Amt Tendered: \$350.00

Total Due: \$350.00

Total Tendered: \$350.00

Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.